THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.5727 OF 2006

DATED: 23-03-2006

BETWEEN

V. Butchi Reddy,

S/o. V. Ram Reddy,

Occ: Contractor,

R/o. H.No.11-23,

Mayuri Nagar,

Miyapur,

Serilingampally (M),

Ranga Reddy District.

...PETITIONER

AND

The Commissioner,

Serilingampally Municipality,

Serilingampally Mandal,

Ranga Reddy District.

...RESPONDENT

ORDER:

Petitioner seeks a Writ of Mandamus to declare the Tender No.F1/341/06 dated 09.03.2006 issued by the Commissioner, Serilingampally Municipality, Ranga Reddy District as illegal,

arbitrary and discriminatory.

Learned counsel for the petitioner submits that the petitioner is a registered contractor with the Serilingampally Municipality and
he has been executing sanitation works in the said municipality since 10 years without any complaints whatsoever. He further submits that in respect of sanitation work in Zone No.10 (Ward 21 of Radhey Sham Nagar, Whisper Valley of Raidurga) of Serilingampally Municipality for sweeping of roads, sub-lanes, lifting of garbage, cleaning side drains, lifting silt cleaned, dewatering including storm water drain, sewerage, clearing of bushes, vegetation, loading of trucks, debris, including providing protective jackets and uniforms to the workers, costs of tools, implements, engaging 35 HP hydraulic tractor with trally and maintenance, earth work excavation, road cutting and in respect of H.No.5-52 to end, H.No.6-1 to H.No.6-33 of Raidurga (including Satya Kalyani, ROI, RBR Towers with 30 workers (20 sweepers, 6 drain cleaners and 4 on tractor) to provide labour and machinery round the clock as and when required, the impugned tender was flouted on the estimate of Rs.14,34,636/- for twelve months period. The eligibility criteria for participating in the tender is to pay Earnest Money Deposit (EMD) of Rs.1,00,000/-. The learned counsel further submits that insisting on payment of Rs.1,00,000/- towards EMD for the estimated work of Rs.14,33,636/- is illegal and contrary to Rule 4(2)(v) of The Andhra Pradesh Municipalities Tender Rules, 1967 (for short 'the Rules').

Perusal of Rule 4(2)(v) goes to show that the earnest money which should accompany the tender and the amount and nature of security required in case the tender is accepted shall in no case be less than 2½ per cent unless the Government relax the limit in special circumstances.

I am of the opinion that the said rule prescribes the minimum amount of EMD, if the tender is accepted, as not less than 2½ % and no maximum amount is fixed. Therefore, I am of the *prima facie* opinion that insisting upon payment Rs.1,00,000/- towards EMD is not contrary to the said Rules.

Learned counsel for the petitioner further submits that in the same municipality in respect of a work estimated to Rs.9,15,420/-,

the EMD to be paid, was fixed at Rs.9,200/- only. Therefore, the action of the respondent in insisting upon to pay EMD of Rs.1,00,000/- is illegal, arbitrary and discriminatory and contrary to the G.O.Ms.No.94 Irrigation & CAD (PW & CAD) Department dated 01.07.2003.

I am of the opinion that merely because the EMD in respect of some other contract was fixed at 1% only, the same cannot be termed as discrimination, as the petitioner was also entitled to avail the benefit of 1%, but the fixation of EMD of Rs.1,00,000/- in respect of the impugned tender is not illegal, arbitrary and discriminatory. Unless the tender Rules are amended the aforesaid GO has no application to the Rules. Therefore, it is not open for the petitioner to contend that the EMD should be fixed at 1%.

The writ petition is accordingly dismissed.

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V. ESWARAIAH, J

March 23, 2006

DSK